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2000 DEC 11 P 4: 54

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December 11, 2000

BY HAND DELIVERY

Jeff S. Jordan, Esq.
Supervisory Attorney
Central Enforcement Docket
Federal Election Commission
999 E Street N.W.
Washington, DC 20463

Re: MUR 5141

Dear Mr. Jordan:

On behalf of our client, Terry Lierman, we submit this response to the complaint in the above referenced matter under review. A Statement of Designation of Counsel for Mr. Lierman will be forwarded to your office within 24 hours.

If you have any questions, please feel free to call me at (202) 662-9700.

Sincerely,



David E. Frulla

DEF:mlc

enclosure

BEFORE THE FEDERAL ELECTION COMMISSION 2000 DEC 11 P 4 54

In the Matter of:

Matter Under Review 5141

Terry Lierman, *et al.*,

Respondents.

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RESPONSE TO THE COMPLAINT BY TERRY LIERMAN

Terry Lierman respectfully submits the following response to the complaint filed in the above referenced matter under review ("MUR"). For the reasons set forth herein, Mr. Lierman respectfully requests that the Commission dismiss this matter and find no reason to believe that the complaint sets forth a violation of the Federal Election Campaign Act of 1971, as amended, ("FECA" or the "Act") and, accordingly, that no action be taken in relation to the MUR.

I. Statement of Facts

On June 25, 1999, Terry Lierman made a loan to James P. Moran,¹ his friend of more than twenty-five years.²

¹ Mr. Moran currently serves as a member of the United States House of Representatives.

² Messrs. Lierman and Moran became professionally acquainted in 1974 while Mr. Lierman was working for the U.S. Senate Labor-HEW Subcommittee and Mr. Moran was working for the U.S. Department of Health, Education and Welfare. Because of their work, Mr. Lierman and Mr. Moran attended many of the same meetings and events. When Mr. Lierman became staff director of the Senate, Labor, HHS and Educations Appropriations Subcommittee in 1976, Mr. Moran was the first person Mr. Lierman hired to be on his staff.

Mr. Lierman provided a loan which enabled Mr. Moran to defray his mounting legal expenses, the terms of which were drafted by Mr. Moran's divorce counsel. Upon receiving the loan, Mr. Moran endorsed the check to his divorce counsel's law firm as payment for legal services. A copy of the check is attached as Exhibit A.

II. The Law

A "contribution," as that term is defined in the Act, includes loans made "for the purpose of influencing an election." 2 U.S.C. § 431(8)(A)(i). *See also* 11 CFR § 100.7(a)(1).

The payment by a third party for the personal expenses of a candidate for federal office is not a contribution to that candidate if the "payment would have been made irrespective of the candidacy." 11 CFR § 113.1(g)(6).

III. Analysis

The complainant alleges that the loan by Mr. Lierman constituted a contribution to Mr. Moran's campaign committee, in violation of unspecified provisions of the Act.

As noted, for the loan to be considered a contribution to Mr. Moran's campaign, Mr. Lierman would have had to have made the loan *for the purpose of influencing* Mr. Moran's election to federal office. 2 U.S.C. § 431(8)(A)(1); *See also* 11 C.F.R. § 100.7(a)(1).

In this case, however, the loan was not made for the purpose of influencing Mr. Moran's election. For this reason, the loan cannot be considered a "contribution" under the Act and accompanying regulations. This conclusion is underscored by the fact that, upon receipt of the loan, Mr. Moran endorsed the check to his divorce counsel's law firm as payment for legal services.

Moreover, the loan was made approximately eighteen months prior to election day and at a time when Mr. Moran's campaign was not in need of funds.³ In fact, Mr. Moran has not contributed or loaned personal funds to his campaign committee in more than four years.⁴

Nevertheless, Commission regulations permit the payment by a third party of a candidate's personal expenses if the payment would have been made "irrespective of the candidacy." 11 CFR § 113.1(g)(6). Mr. Lierman provided the loan to Mr. Moran for reasons completely unrelated to Mr. Moran's candidacy, and thus, the loan would have been made whether Mr. Moran was a candidate or not.⁵

We note that the complainant did not allege that the loan was made for the purpose of influencing Mr. Moran's election to federal office. Nor did the complainant cite any evidence tending to prove that the proceeds of the loan were used to benefit Mr. Moran's campaign. According to the complainant, "the purpose of the loan is irrelevant," and constituted a contribution simply because Mr. Moran was a candidate at the time he received the loan. Complaint at 4. Complainant, however, fundamentally misstates the law.

³ On June 30, 1999, just five days after the loan was made to Mr. Moran, Moran for Congress, Mr. Moran's principal campaign committee, reported to the Federal Election Commission ("FEC") cash on hand of \$785,815. By the end of 1999, Moran for Congress had \$818,120 remaining in its campaign coffers after having made disbursements for the year totaling \$268,354. As of October 18, 2000, Moran for Congress had \$856,730 total cash on hand. Clearly, Mr. Moran's campaign was never in need of Mr. Lierman's loan, and is further evidence that the loan was not made for the purpose of influencing Mr. Moran's election. Moran for Congress, FEC Report of Receipts and Disbursements.

⁴ Mr. Moran contributed \$2,078 to his campaign on September 21, 1995.

⁵ 11 CFR § 113.1(g)(6) lists examples of payments considered "irrespective of the candidacy." These include, but are not limited to, "situations where the payment is a donation to a legal expense trust fund established in accordance with the rules of the United States House of Representatives." 11 CFR 113.1(g)(6)(i).

To constitute a contribution, the Act unambiguously requires that a loan be made for the purpose of influencing a candidate's election to federal office 2 U.S.C. § 431(8)(A)(1). A loan made for reasons unrelated to an individual's campaign, or whose proceeds are not used for campaign related expenses, cannot constitute a contribution to that campaign. A connection between the loan and the recipient's campaign must exist to trigger the Act's limitations and prohibitions.⁶ In this case, there was *no* connection between the loan and Mr. Moran's campaign, nor did the complainant allege, or provide any evidence, that a connection existed.

IV. Conclusion

For the foregoing reasons, we respectfully request that the Commission dismiss this matter and find no reason to believe that the complaint sets forth a violation of the Federal Election Campaign Act of 1971, as amended, ("FECA" or the "Act") and, accordingly, that no action be taken in relation to the MUR.

⁶ The Commission has found, in very limited circumstances, that the receipt of funds by a candidate for the purpose of paying living expenses while campaigning can constitute a contribution to the candidate's campaign. The Commission addressed this issue in Advisory Opinion ("AO") AO 1982-64 and based its conclusion on the presence of three factors. First, that the receipt of funds for living expenses would free-up other funds of the candidate for campaign purposes. Second, that the candidate would have more time to spend on the campaign instead of pursuing his or her usual employment. Third, the funds would not have been donated but for the candidacy. None of these factors is present in this case.

Mr. Moran continued to pay his living expenses with his salary in the U.S. House of Representatives. The receipt of the loan to pay for his legal costs associated with the divorce did not "free-up" any funds of Mr. Moran's for campaign purposes. This conclusion is underscored by the fact that Mr. Moran has not contributed or loaned any personal funds to his campaign committee in more than four years. Second, the receipt of funds from Mr. Lierman did not give Mr. Moran any "more time" to spend on the campaign, since he was still employed full time by the U.S. House of Representatives. Third, the loan was provided irrespective of Mr. Moran's candidacy for election.

EXHIBIT A

TERRY L. LIERMAN
CONNIE D. LIERMAN

0517

CMA Cash Management Account

PAY TO THE
ORDER OF

James B. Mera \$25,000.
Twenty-five thousand 00/100

FOR
Merrill Lynch

Barbara J. [illegible]

[Signature]

James Mera
Pay to the order of
The Davis Law Firm

JE 99 29

EXHIBIT A